

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 204 OF 2017

DIST. : AHMEDNAGAR.

Balasaheb s/o Laxmanrao Deshmukh,
Age. 61 years, Occ. Legal Profession,
R/o Revenue Housing Society,
Wart No.1, At post : Shrirampur,
Dist. Ahmednagar.

-- APPLICANT.

VERSUS

The State of Maharashtra,
Through its Principal Secretary,
Law & Judiciary Department,
M.S.,Mantralaya, Mumbai-32.

-- RESPONDENT.

APPEARANCE :Shri A. S. Deshmukh, Advocate for
the Applicant.

: Shri M. S. Mahajan, Chief
Presenting Officer for Respondent.

CORAM : B. P. Patil, Member (J)

JUDGEMENT**{Delivered on 15-02-2018}**

1. The applicant has challenged communication dated 2.12.2014 received from the Respondent rejecting his request to grant pension and pensionary benefits and prayed to quash the same and to extend the pensionary benefits to him in view of the provisions of M.C.S. Pension Rules of 1982 on the basis of the service rendered by him on various posts from 1.1.1996 to 31.8.2013 by filing the present O.A.

2. Applicant has passed B.A. & LL.B. examination in the year 1977 and 1980 respectively. On 21.12.1995 he was appointed as Subordinate Govt. Pleader / Asstt. Govt. Pleader in Ahmednagar District by the respondent for a period of one year subject to the conditions of service laid down in the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984. The applicant was continued thereafter without any break. In the year 2007 or 2008 Maharashtra Public Service Commission published advertisement calling applications for the post of Asstt. Legal Advisor-cum-Under Secretary in the General State Services, Group-A. Applicant applied for the said post and participated in

the selection process undertaken by the M.P.S.C. He was selected for the said post and recommended by M.P.S.C. to the respondent. Accordingly the respondent issued G.R. dated 21.3.2009 appointing the applicant on the post of Asstt. Legal Advisor-cum-Under Secretary on probation for a period of two years. Thereafter, a Corrigendum has been issued by respondent on 21.5.2009 to the said appointment order mentioning that, his appointment as Asstt. Legal Advisor-cum-Under Secretary under the G.R. dated 21.3.2009 was his initial appointment under State Government, the new "Defined Contribution Pension Scheme" introduced while G.R. dated 31.10.2005 would be applicable to him and the provisions of M.C.S. (Pension) Rules, 1982 and M.C.S. (Commutation of Pension) Rules, 1984 and the scheme of G.P.F. were not applicable to him. It is contention of the applicant that, he had joined post of Asstt. Legal Advisor-cum-Under Secretary w.e.f. 6.4.2009. Thereafter, he was temporary promoted as Asstt. Legal Advisor-cum-Under Secretary on 26.3.2013. He worked on the said post till his retirement i.e. till 31.8.2013. Thereafter, the respondent was pleased to issue an order appointing him as Asstt. Legal Advisor-cum-Under Secretary for a period of 11 months from 1.10.2013 and he worked there till 31.8.2009.

3. It is contention of the applicant that, the applicant had served as a Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor w.e.f. 1.1.1996 till he was selected and appointed as Asstt. Legal Advisor-cum-Under Secretary with the respondent on 6.4.2009. He rendered continuous service more than 17 years and 8 months with the respondent. Therefore, he is entitled to get pension and pensionary benefits as provided under M.S.C. (Pension) Rules 1982. Therefore, he approached the respondent to extend benefit of pension and other pensionary benefits by filing an application on 5.5.2014. The respondent had given reply to the said application by communication dated 2.12.2014 and informed him that his appointment as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor cannot be considered for counting his pensionable service. He was appointed on the post of Asstt. Legal Advisor-cum-Under Secretary after 1.11.2005 and therefore, M.C.S. (Pension) Rules 1982 are not applicable to him. Therefore, his request was rejected.

4. It is contention of the applicant that, the respondent had not considered his earlier service rendered as Subordinate Govt.

Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor since the year 1996. It is his contention that, he joined as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor in the year 1996. Therefore, provisions of M.C.S. (Pension) Rules, 1982 are applicable to him. It is his contention that, the respondent had not considered the provisions of Rules 30 & 53 of the Pension Rules, 1982 and wrongly rejected the application. It is his contention that the impugned communication dated 2.12.2014 is against the provisions of Pension Rules and therefore, he prayed to quash the same and to extend the pensionary benefits to him by allowing the O.A.

5. Respondent resisted the application by filing his affidavit in reply. It has admitted the fact that, the application of the applicant was rejected by communication dated 2.12.2014 as the applicant was not eligible to get pension and pensionary benefits. It is his contention that, applicant was appointed as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor as per the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984 and as per the said provisions all the Law Officer except the Advocate General shall hold the office during the pleasure of the Govt. in

Law & Judiciary Department as per Rule 30. It is further contended by him that, Law Officer shall be entitled to fees as per Rule 24 of the Law Officers Rules and Govt. Resolution issued from time to time. It is contended by the respondent that, the services as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor cannot be considered as Govt. service as such post is tenure post and concerned Officer is entitled to fees as per Rules and regulations. Therefore, the provisions of M.C.S. (Pension) Rules are not applicable to the applicant. It is contention of the respondent that, the applicant was selected by M.P.S.C. as Asstt. Legal Advisor-cum-Under Secretary on 21.3.2009 and therefore, his case has to be governed by the provisions of new scheme "Defined Contribution Pension Scheme", 2005. The provisions of M.C.S. Pension Rules, 1982, M.C.S. (Commutation of Pension) Rules, 1984 as well as scheme of G.P.F. are not applicable to the applicant, as he was appointed after 1.11.2005 after enforcement of new pension scheme. It is contended by the respondent that, applicant's appointment as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor cannot be considered as Govt. service and therefore, it cannot be counted for the purpose for counting pensionable service. It is contended by him that the application of the

applicant has been rejected in view of the said provisions and there is no illegality in the order and therefore, he justified the impugned order and prayed to reject the O.A.

6. I have heard Shri A. S. Deshmukh, learned Advocate for the applicant and Shri M. S. Mahajan learned Chief Presenting Officer for respondents. I have also perused the affidavit in reply and various documents placed on record by the respective parties.

7. Admittedly, the applicant was initially appointed as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor in Ahmednagar District in the year 1996 and thereafter his appointment was continued till he was selected by M.P.S.C. as Asstt. Legal Advisor-cum-Under Secretary and appointed on that post in the year 2009. Admittedly, he joined the office of the respondent as Asstt. Legal Advisor-cum-Under Secretary on 6.4.2009. He retired on superannuation on 31.8.2013 from the post of Asstt. Legal Advisor-cum-Under Secretary. Admittedly, the applicant filed the application with the respondent with a request to extend the pensionary benefits to him considering his earlier service rendered as Subordinate

Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor during the period from 1996-2009. The respondent rejected the representation of the applicant vide communication dated 2.12.2014.

8. The learned Advocate for the applicant submitted that, the applicant is continuously working as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor since the year 1996 till his selection by M.P.S.C. as Asstt. Legal Advisor-cum-Under Secretary and appointment on the post on 6.4.2009. He had submitted that, the service rendered by the applicant on the post of Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor from 1996-2009 can be treated as a Govt. service and same can be considered for counting his pensionable service. He has submitted that, since the applicant has been appointed in the year 1996 as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor the provisions of M.C.S. Pension Rules, 1982 are applicable in the instant case, but the respondent had not considered the said aspect and rejected his application by communication dated 2.12.2014. He has submitted that, the impugned order is illegal

and therefore, he prayed to quash the same and extend the benefits of pension and pensionary benefits to the applicant.

9. Learned Presenting Officer has submitted that, the applicant was appointed for the first time in the year 2009 in the Govt. service as Asstt. Legal Advisor-cum-Under Secretary w.e.f. 21.3.2009. In his appointment letter it has been specifically mentioned that, M.C.S. Pension Rules 1982, M.C.S. Commutation of Pension Rules 1984 and Scheme of G.P.F. are not applicable to him and provisions of newly introduced scheme "Defined Contribution Pension Scheme 2005" will be applicable to him. He has submitted that, such condition is mentioned in the appointment order dated 21.3.2009 (page 29 of the paper book). He has submitted that, applicant rendered only four years' service from 2009 to 31.8.2013 and therefore the provisions of M.C.S. Pension Rules are not attracted in this case. The applicant is not entitled to get pension and pensionary benefits and therefore the respondent has rejected his application.

10. Learned Presenting Officer has submitted that, appointment of the applicant on the post of Subordinate Govt.

Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor has been made for a particular tenure. It was a tenure posting. The applicant received the fees for the service rendered by him on that post in view of the provisions of the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984. The said appointment of the applicant on the post of Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor cannot be considered as Govt. service and therefore, the same cannot be considered for the pension purpose. He has submitted that, the respondent has rightly rejected the request made by applicant by communication dated 2.12.2014.

11. On perusing the record it reveals that, applicant has entered the Govt. service on 6.4.2009 on the post of Asstt. Legal Advisor-cum-Under Secretary under Law & Judiciary Department. The Corrigendum to the appointment letter page no.29 of the paper book clearly shows that, the applicant was made aware about the fact that, the provisions of "Defined contribution Pension Scheme" are made applicable to him, as he was appointed after 31.10.2005. It has also been mentioned in the said appointment letter that, provisions of M.C.S. (Pension) rules 1982, M.C.S. (Commutation of Pension) Rules 1984 and

General Provident Fund Scheme were not applicable to him. By accepting the said condition the applicant joined the service. He rendered service for about 4 years and then retired on superannuation w.e.f. 31.8.2013. Since the provisions of M.C.S. (Pension) rules 1982, M.C.S. (Commutation of Pension) Rules 1984 and General Provident Fund Scheme are not applicable to the applicant, the applicant is not entitled to get pension and pensionary benefits and therefore, respondent has rightly rejected his claim in that regard.

12. As regards the contention of the applicant that, he was initially appointed as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor in the year 1996 and his continuous service on that post till his appointment on the post of Asstt. Legal Advisor-cum-Under Secretary in the year 2009 and the same cannot be considered as Govt. service, it is material to note here that, the appointment of the applicant on the post of Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor has been made in view of the provisions of Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984. The said appointment was for a particular period and it was extended from time to

time. For the services rendered by the applicant no 'pay' was defined under the M.C.S. (Pension) Rules has been paid to the applicant. He received the fees as per the above said rules. The appointment of the applicant on the said post was tenure posting and therefore, it cannot be termed as regular services of the applicant in the Govt. Department. No fix pay was granted to the applicant when he was rendering services as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor. Therefore, the same cannot be treated as his regular service in the Govt. Department and therefore, the services rendered by the applicant as Subordinate Govt. Pleader/Asstt. Govt. Pleader & Addl. Public Prosecutor cannot be coconsidered while counting his Govt. service. Therefore, I do not find force in the submissions advanced in that regard by the learned Advocate for the applicant.

13. As the appointment order of the applicant (page no.29 of the paper book) specifically provides that, the M.C.S. (Pension) Rules, 1982, M.C.S. (Commutation of Pension) Rules, 1984 and Scheme of G.P.F. were not applicable to the applicant, the Applicant cannot claim pension under the said provisions. Therefore, the provisions of Rules 30 & 53 of the Maharashtra

Civil Services are not applicable in this case. The respondent has rightly rejected the representation of the applicant dated 5.5.2014 by communication dated 2.12.2014 recording the just reasons. There is no illegality in the impugned order/communication dated 2.12.2014. Therefore, no interference is called for in the impugned order / communication dated 2.12.2014. There is no merit in the O.A. Consequently the O.A. deserves to be dismissed.

14. In view of the above said discussions the O.A. is dismissed with no order as to costs.

MEMBER (J)